



REQUEST FOR PROPOSALS TITLE PAGE
Include this Page as the First Page in the Proposal Response

City of Lynchburg, Virginia
Procurement Division

Proposal Title: Lynchburg City Schools Human Resource and Finance Software

This is the City of Lynchburg's Request for Proposals (RFP) No. 2017-030, issued October 17, 2016. Direct inquires for information should be directed to Tomek Kruszcak: e-mail: tomek.kruszcak@lynchburgva.gov; Phone: 434-455-4233; Fax: 434-845-0711. All requests for clarification of or questions regarding this RFP must be made in writing and received by 2:00 p.m., November 10, 2016. All responses to this solicitation shall be in strict accordance with the requirements set forth in this RFP document and the ensuing contract documents.

Sealed proposals will be publicly accepted prior to **4:00 p.m., November 17, 2016**; however, only the names of firms responding will be available for announcement. Proposals received after the stated due date and time shall not be considered and will be returned to the Offeror. Submit proposals in a sealed, opaque envelope, and put the RFP number, title, due date and time on the lower left front. Offerors are responsible for having their proposal stamped by Procurement Division staff before the deadline indicated above and acknowledge all addenda so issued in the space provided below. Any alteration or changes to this RFP will be made only by written addendum issued by the Procurement Division, and all Offerors are responsible for obtaining issued addenda from the City's Procurement website: <http://www.lynchburgva.gov/current-solicitations>.

Acknowledge receipt of addenda here: No. _____ Date: _____ No. _____ Date: _____

Submit Proposals: BY MAIL, GROUND DELIVERY, OR HAND DELIVER TO:

Procurement Division
Third Floor City Hall
900 Church Street
Lynchburg, Virginia 24504

Information the Offeror deems Proprietary is included in the proposal response in section(s): _____

See Paragraph B. on page 2 for guidelines on submitting proprietary information.

In compliance with this Request for Proposals and all the conditions imposed therein, the undersigned offers and agrees to furnish the services in accordance with the attached proposal or as mutually agreed by subsequent negotiations. By my signature below, I certify that I am authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this Request for Proposals. Sign in ink and type or print requested information.

Full Legal Name of Offeror: _____

Fed ID OR SOC. SEC. NO.: _____ Date: _____

Address: _____ Phone: (____) _____

E-mail address: _____

Signature: _____

Typed or Printed Name, Title

City Buyer's Signature

I. SUBMISSION OF PROPOSALS

- A. An original (1), so marked, and (5) copies, so marked, for a total of (6) of the proposal document are required. In addition, submit one (1) copy of proposal in an electronic format on CD. The City will not assume responsibility for reproduction where an insufficient number of copies have been supplied. In any such case, the City will notify the Offeror of the deficiency and request that the appropriate number of copies be delivered within 24 hours. Failure to comply with this or other requirements of this Request for Proposal shall be grounds for the City to reject such proposals. Telegraphic or facsimile submission of proposals is not acceptable and any such proposals will not be considered.
- B. **Submission of Proprietary Information**
- Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. (Section 2.2-4342 F. of the Code of Virginia). **Offerors shall submit, in a separate section of the proposal, any information considered proprietary and any copyrighted material and clearly identify the information as proprietary and/or copyrighted information. Offerors may not declare their entire proposal proprietary nor may they declare proposed pricing to be proprietary.** References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not in the separate section labeled proprietary shall be considered Public Information.
- C. Proposals having any erasures or corrections must be initialed by the Offeror in ink.
- D. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors. Any contract resulting from this Request for Proposal shall not be exclusive to the successful firm. The City reserves the right to contract with firms not party to the resultant contract for similar work if it determines this to be in their best interest. If this is a cooperative procurement, each entity referenced will award a contract in accordance with its respective independent procurement policies and procedures and as it deems will best serve its interest.
- E. By submitting a proposal, the Offeror agrees that the proposal will not be withdrawn for a period of 90 days following the due date for proposal responses.
- F. By submitting a proposal, the Offeror certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated its proposal for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with the City.
- G. By submitting a proposal, the Offeror certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontracting firm in connection with its proposal; and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.
- H. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors are encouraged to submit proposals.
- I. The City will not be responsible for any expense incurred by any Offeror in preparing and submitting a proposal. All proposals submitted will become the property of the City.
- J. By submitting a proposal, the Offeror is certifying that Offeror is not currently debarred by the City, or in a procurement involving federal funds, by the Federal Government. A copy of the City debarment procedure in accordance with Section 18.1-10 of the City's Procurement Ordinance is available upon request.

II. PURPOSE

- A. The purpose of this RFP is to solicit sealed proposals from qualified offerors to provide Lynchburg City Schools, with a packaged software product (or products) to fulfill the Finance and Personnel Management functional requirements of the School Division. In-scope organizations and related functionality includes:
- a) Human Resources, including –
 - Recruiting
 - Position Control and Scheduling
 - Personnel Administration
 - Benefits Eligibility, Enrollment, and Administration
 - Professional and Organizational Development
 - b) Business & Finance, including -
 - Grant Management & Reporting
 - Budget Management
 - Payroll
 - Accounts Payable
 - Invoicing & Accounts Receivable
 - Management Reporting
 - General Ledger & Financial Reporting
 - Food Service Accounting
 - c) Procurement
 - Purchase Requisition & Purchase Order Creation and Management
 - Asset Management

III. BACKGROUND INFORMATION

Lynchburg, Virginia

The City of Lynchburg is located near the geographic center of the state, bordered by the eastern edge of the Blue Ridge Mountains. The historic downtown area sits along the banks of the James River. The city covers approximately 50 square miles, and the population estimate is 79,047.

Lynchburg City Schools

Lynchburg City Schools, referred to from this point forward as LCS, offer educational services to more than 8,000 students enrolled in preschool through adult classes in two high schools, three middle schools, and eleven elementary schools. Alternative elementary, middle and high school programs, gifted programs, and programs for the disabled are also available. Lynchburg city schools employ over 1,600 people, including teachers, administrators and support staff. A listing of LCS schools and other information is available at our official website www.lcsedu.net

History

In 1993, LCS purchased and implemented NCS CIMS III on an IBM System/36. The finance (FMS) and payroll (EMS) modules of this system are still in use today. CIMS is currently owned and supported by Weidenhammer, a company headquartered in Reading, PA. The CIMS software has been updated as enhancements were added, and is currently installed on an IBM Power 7 server. The database platform is IBM DB2. Functionality provided by EMS and FMS includes G/L, Budgeting, Purchasing, Accounts Payable, Payroll, Cash Disbursements and basic employee information such as demographics and contracts.

In 2005, LCS implemented Kronos for employee time and attendance. Kronos is installed on the IBM server, and has a web interface accessible to employees and administrators. Custom programs were developed by Kronos to post time and accrual data to CIMS. Time clocks, which are installed at all schools and other facilities, send swipe data to Kronos over the LAN.

LCS also utilizes Timpanogos Technologies Employee Self-Serve (ESS). This product has a web interface and uses the CIMS databases to provide employees with demographic, payroll (including paycheck), vacation/leave, W2, and other information.

Other software currently in use by LCS includes AESOP for substitute management and absence reporting, and Winocular for job applications.

IV. SCOPE OF SERVICES

A. General Requirements:

LCS is seeking proposals for an enterprise-wide software solution, as described in Section II, Purpose. The planned procurement will include:

1. Perpetual, limited software licenses for on premise and/or vendor-hosted operation of all software products.
2. Implementation consulting services, to include project management, software installation, data conversion, and initial configuration services.
3. Comprehensive user training.
4. Comprehensive technical training for the LCS Information Technology support staff.
5. Software development and/or modification services.
6. Annual software support services.

B. Specific Requirements:

1. LCS requires that the Contractor follow the business practices listed below in order to successfully compete for this contract:
 - a. Contractor shall perform services to the highest standards in the packaged software and software development industries.
 - b. Specific responses to the LCS Functional Requirements and the Offer response format are included in Appendices A.
 - i. All Offerors shall submit the attached Excel spreadsheet, titled Attachment A, as part of their proposal.
 - c. LCS has defined the following timeline for selection and implementation:
 - i. RFP Publication: October 12, 2016
 - ii. RFP Submittal: November 11, 2016
 - iii. Completion of Vendor Selection & Negotiation: December 31, 2016
 - iv. Full implementation Completion: December 31, 2017

V. PROPOSAL PREPARATION

Proposals must address the tasks included in the Scope of Services and the Criteria for Proposal Evaluation. Proposals should be prepared simply, providing straightforward and concise responses to requests for information and descriptions of qualifications and capabilities. Responses shall be limited to no more than 50 pages excluding the cover, including all other materials. Each copy of the proposal must be bound with all documentation in a single volume where practical. Failure to do so will result in a lowered evaluation. Incomplete proposals may be determined nonresponsive. Proposals with extraneous information will receive a lower ranking.

Offerors should organize their proposals using the format described below:

Title Page

Furnish the **REQUEST FOR PROPOSALS TITLE PAGE** and include it as the first page of the proposal. The name stated on the Title Sheet must be the full legal name of the Offeror and the address must be that of the office which will have the responsibility for the services provided.

Section 1 - Project Schedule:

The time for the completion of the Project Scope listed above is not to exceed past the December 31, 2017 deadline. The contractor will be expected to submit a detailed schedule for tasks to be performed including time for presentations, critical points in the process and consultations with LCS staff and other interested groups.

Section 2 - Project Methodology

Provide a complete description of the proposed methodology for Offeror's implementation of the software system under this contract, including warranties, training, service contract options and response times. Describe the software required to implement the proposed system, provide the documentation needed for the installation, support, and use of the proposed software, provide tools and/or assistance, at LCS's option, for migrating data from LCS's current system to the new proposed software.

Section 3 – Ability to Meet Scope of Service Requirements

- A. Understanding the problem and technical approach. Statement and discussion of the requirements as they are analyzed by the Offeror.
- B. Executive summary – Provide a narrative, prepared in non-technical terms, summarizing the Offeror's proposal. The executive summary should identify the following: Primary Contact for the Offeror, including name, address, telephone number, and E-Mail address.
- C. A detailed description of the services to be provided which addresses each of the topics listed in the Scope of Work and Technical Specifications. Clearly state your ability to meet or exceed the requested services. Include any exceptions taken to the specifications and your proposed alternative(s).
 - a. Exceptions/Alternatives will be considered. While LCS prefers a single, integrated solution, LCS will be receptive to standalone solutions for certain functional needs. A key characteristic of a proposed "Best-of-Breed" strategy is a verifiable track record of success in a K12 environment. Contributing to that success will be a proven strategy for the integration of the standalone components.

Section 4 - Credentials, qualifications, related experience of the Offeror, designated service team, and financial stability of the firm.

- A. Statement of Qualifications and Capacity of firm to provide services required. The Offeror should include a description of the organizational staff experience as it relates to meeting the Schools' needs to include experience administered similar contracts for governmental entities. The response should address firm's size, structure, and number of years in business.
- B. Key Individuals – The Offeror shall produce a list of key individuals to be assigned to the Schools' contract, specify their role in administering the contract, and provide a current biography/resume for each individual.
- C. References – All Offerors shall include a list of a minimum of three references, from similar projects/contracts, who could attest to the firm's knowledge, quality of work, timeliness, diligence, flexibility, and ability to meet budget constraints. Include names and addresses, contact persons, phone numbers, and E-Mail addresses of all references. LCS reserves the right to contact references other than, and/or in addition to those furnished by an Offeror. References may or may not be reviewed or contacted at the discretion of LCS.

- D. Outline your firm's current and anticipated workload and your plan to dedicate the necessary resources to assure timely delivery of proposed services. Explain anticipated involvement of City staff and anticipated hours necessary to produce the desired outcomes.

Section 5 – Compliance with Contractual Terms

- A. State your compliance with the contract terms and conditions. List any deviations and provide justification.
- B. Offeror's shall provide a letter from the Manufacturer assuring uninterrupted service and support for the proposed system.

Section 6 – Summary

A brief summary of the reason that the Offerors believe themselves to be the most qualified for this project.

Section 7 – Pricing

Completed pricing sheet including the breakdown of software, training, and implementation costs.

Section 8 – Attachment A – Compliance to Specific Requirements

Completed Excel Spreadsheet, titled Attachment A.

VI. SERVICE AND MAINTENANCE AGREEMENT

Offerors shall provide, in detail, annual software maintenance contract options for repairs to the proposed solution after the initial warranty period. Such maintenance contract options must include a commitment on the part of the successful Contractor to repair any reported failures in the system, and specify the time frames in which the Contractor will respond. Such maintenance contracts must also entitle LCS to receive, as part of the cost of the annual maintenance contract, all modifications and enhancements to the software that are made generally available to all customers utilizing the software.

At the election of the LCS, and after the initial warranty period, Offeror shall enter into an Agreement with LCS to provide the software maintenance as described above for a one (1) year period. Pricing for maintenance agreement should be stated as a fixed cost, with a not-to-exceed amount specified for annual price increases in future years.

The Offeror shall describe the location(s) from which solution support will be provided, the mechanisms for obtaining support (i.e., a toll-free telephone number to a customer support desk, email, etc.), and the hours of operation. Information, including costs, should also be provided related to any available support outside of normal business hours (8am – 5pm, Eastern Time, Monday through Friday).

VII. PROPOSAL EVALUATION AND AWARD

LCS will review and evaluate each proposal and selection will be made on the basis of the criteria listed below:

1. The degree of functional match to the LCS Requirements Offeror's experience in providing the services requested 25%
2. Offeror's capability and skills to perform the services required 20%
3. Experience working with K12 in Virginia 20%
4. Services to be provided by the Offeror 15%
5. Price 10%
6. Ability to meet the LCS timeline 10%

Method of Award

Following evaluation of the written proposals as submitted, offerors will be ranked by initial proposals. Samples will then be requested from the top candidates for evaluation purposes. After evaluation of samples, presentations shall be held prior to selection. The opportunity to present shall be made only to those whose samples were evaluated and deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal. Upon completion of the presentations the selection committee shall select the number 1 ranked firm and LCS shall begin negotiations with that firm in an attempt to reach an agreement to provide the services. Price shall be considered, but need not be the sole determining factor. If after negotiations have been conducted with the top ranked firm, an agreement cannot be reached, negotiations will be terminated with that firm, and negotiations began with the firm ranked number 2. This procedure will continue until an agreement is reached or negotiations are terminated and the services re-solicited. At any stage of the selection process should LCS determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

Notice of Award will be posted on the City's web site (www.lynchburgva.gov) and on the bulletin board located outside of the Procurement Office, 3rd floor City Hall, 900 Church Street, Lynchburg, Virginia, 24504.

VIII. CONTRACT TERM

Initial contract term for the Maintenance and Service Agreement will be for one (1) year with the option to be automatically renewed for four (4) additional one (1) year periods under the terms and conditions of the original contract.

IX. GENERAL TERMS AND CONDITIONS

The Contract for Services ("Contract" or "Agreement") with the successful Offeror will contain the following Terms and Conditions. Offerors taking exception to these terms and conditions or intending to propose additional or alternative language must (a) identify with specificity the Terms and Conditions to which they take exception or seek to amend or replace; and (b) include any additional or different language with their proposal. Failure to both identify with specificity those terms and conditions Offeror takes exception to or seeks to amend or replace as well as to provide Offeror's additional or alternate Contract terms may result in rejection of the proposal.

A. Subcontracting and Assignment of Work

The Consultant shall not subcontract or assign portions of the work, other than those specifically defined in the contract, without the express written consent of the City. A description of any work the Offeror proposes to subcontract shall be submitted to the City for review and approval along with the name and address of the individual, firm, or corporation that is the proposed subcontracting firm. This submittal shall also include a list of the key personnel that the subcontractor will assign to the project. All work performed by any subcontractor shall be coordinated by the Consultant who shall be responsible to the City for all work performed by any subcontractor or special consultant.

B. Independent Successful Firm

The Consultant is an independent firm and nothing contained in a subsequent contract shall constitute or designate such firm or any of its agents or employees as employees of the City.

C. Notification

Any notice required by the contract shall be effective if given by registered mail, return receipt requested, to the Consultant in the name and at the address given in its proposal submission; provided that change of address shall be effective if given in accordance with this paragraph. Unless otherwise specified, any notice to the City shall be given to the City of Lynchburg, Procurement Manager, 900 Church Street, Lynchburg, VA 24504. The Consultant agrees to notify the City immediately of any change of legal status or of address. Any notice provided in accordance with this paragraph shall be deemed to have been completed five calendar days after the date of mailing.

D. Cooperative Procurement

This procurement is being conducted by the City of Lynchburg in accordance with the provisions of 2.2-4304 *CODE OF VIRGINIA*. Except for contracts for architectural and engineering services, if agreed to by the contractor, other public bodies may utilize this contract. The Contractor shall deal directly with any public body it authorizes to use the contract. The City, its officials and staff are not responsible for placement of orders, invoicing, payments, contractual disputes, or any other transactions between the Contractor and any other public bodies, and in no event shall the City, its officials or staff be responsible for any costs, damages or injury resulting to any party from use of a City Contract. The City assumes no responsibility for any notification of the availability of the contract for use by other public bodies, but the Contractor may conduct such notification.

E. Termination

Subject to the provisions below, the contract may be terminated by the City upon thirty (30) days advance written notice to the Consultant; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted. All information and materials gathered and/or prepared by or for it under the terms of the contract shall be delivered to, become and remain the property of the City. The City shall have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Consultant.

Termination for Convenience:

The City may terminate this contract for convenience at any time in which the case the parties shall negotiate reasonable termination costs.

Termination for Cause:

In the event of Termination for Cause, the thirty (30) days advance notice is waived and the Consultant shall not be entitled to termination costs.

Termination Due to Unavailability of Funds in Succeeding Fiscal Years:

If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Contract shall be canceled and, to the extent permitted by law, the Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

F. Laws and Regulations

The Successful firm shall abide by all Federal, State and Local laws and regulations governing the provision of the services called for in the contract. The Successful firm shall give notice and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

By entering this Contract, the Consultant certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

This contract shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia. Any legal proceedings arising out of or related to this contract shall be filed by the parties in the City of Lynchburg General District Court or the Lynchburg Circuit Court.

G. Additional Services

The City may add to the Scope of Services any services of a similar nature to those specified in the Scope of Services of this Request for Proposals as mutually agreed to at a price mutually agreed upon.

H. Severability

Each paragraph and provision of the resultant contract will be severable from the entire contract and if any provision is declared invalid, the remaining provisions shall remain in effect.

I. Licenses and Permits

The successful firm shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the work which are legally required prior to and during the work. The City will not charge for any permits required by the City of Lynchburg.

J. Nondiscrimination

If the resultant contract exceeds \$10,000, during the performance of the contract, the Consultant agrees as follows:

- a. The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Consultant will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontracted firm or vendor.

K. Payments to Successful firms

Payments to the Consultant shall be made within 30 days after receipt of an approved invoice for services provided in the previous month. Backup documentation for each invoice shall be provided in detail satisfactory to the City. The Consultant's records and documentation supporting such invoices shall be made available to the City upon reasonable request. The Consultant agrees to retain all records, documents and support materials relevant to the contract for a period of five years following final payment. Invoices must be prepared in formats as required by funding agencies.

In accordance with Virginia Code Section 2.2-4354 the Consultant agrees that:

1. Should any contractor be employed by the Consultant for the provision of any goods or services under this Contract, the Consultant agrees to the following:
 - (a) The Consultant shall, within seven days after receipt of any payments from the City pursuant to this Contract, either:
 - (1) Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the goods or services provided by the subcontractor; or

- (2) Notify the City, as applicable, and the subcontractor, in writing, of the intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment. Written notice to the City shall be given to: City of Lynchburg Procurement Manager, 900 Church Street, Lynchburg, VA 24504.
- (b) The Consultant shall pay interest to the subcontractors, at the rate of one percent per month on all amounts owed to the subcontractor that remain unpaid after seven days following receipt of payment from the City for goods or services provided under this Contract, except for amounts withheld under subparagraph (a)(2) above.
- (c) The Consultant shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractors firm.
- (d) The Consultant's obligation to pay an interest charge to a subcontractor shall not be an obligation of the City.
- (e) No contract modification shall be allowed for the purpose of providing reimbursement for these interest charges. No cost reimbursement claim shall include any amount for reimbursement of these interest charges.

L. Contractual Claims

Any claims by a contractor or anyone claiming on the contractor's behalf against the City arising under or relating to a contract shall only be resolved as specified in the City's Procurement Ordinance, Sec. 18.1-7, ensuring timely notice of the claim.

The contractor shall give the City written notice of any claim within ten (10) days of the beginning of the occurrence of the event leading to the claim being made. The written notice shall be a document from the contractor addressed to the City official or employee designated by the contract to receive such notice, or if no one is so designated, to the City Manager. The written notice shall clearly state the contractor's intention to make a claim, shall describe the occurrence involved, and shall be transmitted in a manner to ensure receipt by the City. The contractor shall submit the claim and any supporting data to the City within thirty (30) days after the occurrence giving rise to the claim ends. The burden shall be on the contractor to substantiate that it has given written notice and submitted its claim in accordance with this provision.

M. Taxes

The Consultant shall pay all City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price as the taxes shall be an obligation of the Consultant and not of the City and the City shall be held harmless for same by the Consultant.

N. Indemnification

To the fullest extent permitted by law, the Consultant, for itself, heirs, representatives, successors and assigns agrees to save, defend, keep harmless and indemnify the City and all of its officials, agents and employees (collectively, the "City") from and against any and all claims, loss, damage, injury, costs (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from, arising out of or in any way connected with the Consultant's performance (or nonperformance) of the contract terms or its obligations under this contract.

O. Contract Assignment

The resultant contract may not be assigned, in whole or part, without the written consent of the City. The rights and obligations of the Consultant are personal and may be performed only by the Consultant. Any purported assignment that does not comply with this provision is void. This contract is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

P. Royalty and License Fees and Copyright, Trademark and Patent Protection

The Successful firm shall pay all royalty and license fees relating to the items covered by the contract. In the event any third party shall claim that the manufacture, use and sales of these goods offered hereby constitutes an infringement of any copyright, trademark, or patent, the Offeror shall indemnify and hold harmless the City from any cost, expense, damage or loss incurred in any manner by the City on account of such alleged infringement.

Q. Precedence of Documents

The precedence of documents shall be as follows: the CONTRACT, the Request for Proposals and the Offeror's response to the Request for Proposals.

R. Insurance

The Consultant shall be required to maintain in force such insurance, in amounts acceptable to the City, as will protect it and the City from claims which may arise out of or result from the execution of the work, whether such execution be by the firm, its employees, agents, subcontractors or by anyone for whose acts any of them may be liable. This coverage should include, at a minimum, Worker's Compensation and General Liability (including premises/operations, independent successful firms, products and completed operations, contractual liability and personal injury liability). All insurance shall be provided by companies authorized to conduct business in the Commonwealth. The Consultant shall furnish the City with an original Certificate of Insurance upon request. The Certificate should name the City as additional insured under their General Liability coverage. The Consultant shall notify the City at least 30 days prior to policy cancellation, non-renewal or reduction of coverage.

S. Administrative Appeals Procedure

- (a) The following are the exclusive procedures for a bidder or offeror to protest the city's award or decision to award a contract.
- (1) Any protest to award a contract shall be in writing and shall be delivered so that it is received by the city manager not later than five (5) business days after announcement of the award or decision to award, whichever comes first. Otherwise any such protest shall be deemed to be waived.
 - (2) Except for a protest of an emergency or sole source procurement, a protest of a city award or decision to award a contract may only be made by a person who submitted a bid or proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the city's decision. In the case of an emergency or sole source procurement, a protest may only be made by a person who can show that he was reasonably likely to have submitted a successful bid or proposal if the procurement had been other than emergency or sole source.
 - (3) Protests shall only be granted if (1) the protester has complied fully with this Sec. 18.1-6 and there has been a violation of law, the Lynchburg public procurement code, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.
 - (4) The city manager shall issue a written decision on a protest within ten (10) days of its receipt by the city manager.
 - (5) If the protest is denied, the protestor may only appeal the denial or otherwise contest or challenge procurement by then filing suit in the Lynchburg circuit court, Lynchburg, Virginia, and serving the city with such suit within ten (10) days of such denial. Otherwise, the city manager's decision shall be final and conclusive, and the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
 - (6) The city should defer award of a contract where the decision to award has been protested unless there is a written determination by the city manager that proceeding without delay is necessary to protect the public interest or unless the bid or offer of the prospective awardee would expire.
 - (7) The validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal is filed.
 - (8) The exclusive relief allowed if a protest is granted is to void the decision being protested. If a contract has already been awarded and performance under the contract has begun, the contract need not be voided if not in the public interest to do so. Under no circumstances will any monetary amount be allowed to the protestor as part of any relief granted.

- (9) Strictly following these procedures shall be a mandatory prerequisite for protest of the city's award or decision to award a contract. Failure by a bidder to follow these procedures strictly shall preclude that bidder's protest and be deemed to constitute a waiver of any protest.
- (b) A protest may not be based upon the alleged non-responsibility of a person to whom the city awards or makes a decision to award a contract.

T. Drug Free Workplace

In accordance with Sec 2.2-4312 of the Virginia Code, during the performance of this contract, the Consultant agrees to (i) provide a drug-free workplace for the consultant's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the consultant that such consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-Consultant or vendor.

Successful firm shall not use, possess, manufacture, or distribute alcohol or illegal drugs during the performance of the contract or while on City premises or distribute it to City employees.

Successful firm understands that a violation of these prohibitions constitutes a breach of the contract and that the City has the right cancel the contract.

For the purpose of this section, "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a firm, the employees of which are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

U. Certification by Consultant as to Felony Convictions

No one with a felony conviction may be employed under this Contract and by the signature of its authorized official on the response to this solicitation, the Consultant certifies that neither the contracting official nor any of the Consultant's employees, agents or subcontractors who will work under this contract have been convicted of a felony.

V. Confidentiality

1. Consultant Confidentiality

The Consultant acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to the City of Lynchburg. Therefore, except as required by law, the Consultant agrees that its employees will not:

- a) Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.
- b) Access or attempt to access information beyond their stated authorization.
- c) Disclose to any other person or allow any other person access to any information related to the City or any of its facilities or any other user of this Contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, “loaning” computer access codes and/or another transmission or sharing of data.

The Consultant understands that the City, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that the City may seek legal remedies available to it should such disclosure occur. Further, the Consultant understands that violations of this provision may result in Contract termination.

The Consultant further understands that information and data obtained during the performance of this contract shall be considered confidential, during and following the term of this Contract, and will not be divulged without the Purchasing Agent’s written consent and then only in strict accordance with prevailing laws. The Consultant shall hold all information provided by the City as proprietary and confidential, and shall make no unauthorized reproduction or distribution of such material.

2. City Confidentiality

The City understands that certain information provided by the Consultant during the performance of this Contract may also contain confidential or proprietary information. Consultant acknowledges that this Contract and public records (as defined by §2.2-3701 of the Virginia Freedom of Information Act) provided pursuant to this Contract are subject to the Virginia Freedom of Information Act §§2.2-3700 et seq. and the Virginia Public Procurement Act §2.2-4342 of the Code of Virginia.

- W. The Consultant shall devote such part of its time as is reasonably necessary to the operations outlined under the resultant contract. The Consultant may engage in business ventures of a nature and description independent of this Contract with the City. The Consultant is required to disclose immediately any outside activities or interests, as they arise, that conflict or suggest a potential conflict with the declared or stated interests of the City. The Consultant is required to disclose all local government clients and must attest that work for those clients will not conflict with the interests of the City. The City reserves the right to object to such attestations. If such objections arise, the parties will agree to the best course of action to resolve the conflict or potential conflict.
- X. The Consultant shall conduct all transactions under this contract in good faith. The Consultant will employ the highest ethical and professional standards at all times — failure to do so could result in termination of the Contract for cause or convenience.